

Making Commission Payments to Individual Corporations  
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In the past several years, licensees have formed individual corporations in order to take advantage of tax benefits, and have asked to have their commission payments made directly to the corporations. The Commission does not have a formal position on this issue. The practice is prohibited in some states. On the occasions when the Commission is asked about such corporations and the payment of commissions, it has been the Commission's policy to first state that we realize the intent of forming the corporation is not to circumvent the licensing statute. However, there are two issues of concern that must be considered.

First, in light of the statute, is the agency paying a commission to an unlicensed entity, namely the corporation, for brokerage activities? Since the corporation did not conduct the brokerage activity, a commission is not being paid for those services. The second issue is whether the unlicensed corporation is paying a commission to a licensee. Technically, it is and such payment is a violation of the licensing statute, because all commission payments are to be paid by the designated broker to the licensee.

To address these issues, the designated broker should have a written agreement with the licensee holding the corporation stating that commission payments will be paid to the corporation for tax purposes only and not as an attempt to circumvent the licensing law. The written agreement should be kept on file at the agency office for future reference should any question arise.

It should be noted that the Commission's opinion applies only to corporations formed solely for tax purposes, and does not apply to other business corporations that might be formed by a licensee. ***The designated broker is responsible for ensuring what type of corporation is receiving the commission payment.***